

**In the Supreme Court of the United States**

**OCTOBER TERM, 1963**

**No. 461**

**HERBERT APTHEKER AND ELIZABETH GURLEY FLYNN,  
APPELLANTS**

**v.**

**THE SECRETARY OF STATE**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

**MEMORANDUM FOR APPELLEE**

The sole issue on these appeals is the constitutionality of Section 6 of the Subversive Activities Control Act of 1950, as amended, 64 Stat. 993, 50 U.S.C. 785. Section 6 makes it unlawful for any member of a registered Communist organization, or of an organization against which there is in effect a final registration order of the Subversive Activities Control Board, to apply for a passport or to use or attempt to use any passport. Section 6 also makes it unlawful for any officer or employee of the United States to issue a passport to any person whom he knows to be a member of such an organization.

The passports of appellants, whose membership in the Communist Party is uncontested, were revoked by the appellee on the ground that their use would

violate Section 6 of the Act. Appellants then brought the present actions to have Section 6 declared unconstitutional, to enjoin its enforcement and to have their passports reissued. The three-judge district court unanimously held that the provision was "a legitimate exercise of the authority of Congress to regulate the travel of members of Communist organizations, based on the legislative determination that such travel would be inimical and dangerous to the security of the United States" (Juris. St. 30). Accordingly, it granted appellee's motions for summary judgment.

While it is our firm position that the district court's decision was correct, we agree that this Court has jurisdiction and that the question presented by these cases is substantial. Consequently, we do not oppose the noting of probable jurisdiction.

Respectfully submitted.

ARCHIBALD COX,  
*Solicitor General.*

OCTOBER 1963.